

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALBERT BENJAMIN CHEE, JR.,

Defendant.

Case No. 2:14-cr-00033-KJD-CWH

ORDER

The Court conducted a hearing on February 11, 2016, to resolve the parties' disputes regarding the issuance of subpoenas to the Clark County Department of Family Services, among other issues. Ruling from the bench, the Court denied Clark County's Emergency Motion to Quash Subpoenas (ECF No. 61), but stated that it would perform an in camera review of the Department of Family Services records regarding the minor children S.B. and M.B. under Nevada Revised Statutes § 432B.290.¹ The Department of Family Services subsequently delivered documents Bates stamped as DFS 0001-0506, as well as a CD containing an audio recording, to the Court for in camera review.

At the hearing, the Court also granted Defendant Albert Benjamin Chee Jr.'s Amended Motion to Compel Discovery (ECF No. 69) and stated that it would perform an in camera review of an unredacted copy of FBI Form 302, which was attached in a redacted form as Exhibit D (ECF No. 82-1) to the supplement in support of the motion. The purpose of the in camera review of this document is to determine whether the redacted information is relevant to the prosecution of Defendant Chee.

¹ As required by Fed. R. Crim. P. 17(c)(3), on February 16, 2016, defense counsel provided notice of the subpoenas to the minor children's mother, Juanita Bark. (Proof of Service of Subpoena Notice (ECF No. 90).) To date, Juanita Bark has not moved to quash or modify the subpoenas or otherwise objected to the subpoenas.

I. DEPARTMENT OF FAMILY SERVICES RECORDS

Subject to certain exceptions, Nevada Revised Statutes § 432B.280 requires that information maintained by child welfare agencies, such as the Clark County Department of Family Services, be kept confidential. Section 432B.290 governs the release of confidential information maintained by child welfare agencies. Specifically, § 432B.290(e) authorizes the disclosure of information maintained by child welfare agencies to courts other than juvenile courts “for in camera inspection only, unless the court determines that public disclosure of the information is necessary for the determination of an issue before it.”

Here, the parties do not dispute that the Department of Family Services records that are responsive to the subpoenas are subject to § 432B.290(e). The Court reviewed the documents Bates stamped DFS 0001-0506 and finds that all of the documents are necessary for the determination of the issues before the Court, with the exception of the following documents:

- Diligent Search Request, DFS 0319, which appears to be included in M.B.’s file in error; and
- Divorce records for Michael Bark and Juanita Bark, DFS 0321-0328.

The Court therefore will order the Clark County Department of Family Services to disclose these documents to the parties. Additionally, the Clark County Department of Family Services must disclose to the parties copies of the CD, which contains an audio recording of a forensic interview of M.B. conducted on July 29, 2015, a transcript of which was included with the documents provided to the Court. Although the Court finds that the documents and audio recording must be disclosed to the parties under § 432B.290(e), the Court expresses no opinion regarding the admissibility of the documents and the audio recording at trial.

II. FBI FORM 302

The Court reviewed an unredacted copy of FBI Form 302 for purpose of determining whether the redacted information is relevant to the prosecution of Defendant Chee. The Court finds that this document is relevant and therefore will order the Government to provide an unredacted copy of the document to Defense counsel. The Court expresses no opinion regarding the admissibility of the document at trial.

IT IS THEREFORE ORDERED that by March 31, 2016, the Clark County Department of Family Services must provide to the Government and Defendant Chee's counsel all documents provided to the Court for in camera review except the documents Bates stamped DFS 0319 and DFS 0321-0328. The Clark County Department of Family Services also must provide to the Government and Defendant Chee's counsel copies of the CD provided to the Court for in camera review.

IT IS FURTHER ORDERED that all documents and the audio recording disclosed under this Order are subject to the parties' stipulated protective order (ECF No. 91).

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